

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CRIMINAL TERM**

-----X
IN RE THE APPLICATION OF

Complainant,

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DOMINIQUE STRAUSS-KAHN,

Defendant.
-----X

Index No. 2011NY035773

**ORDER TO SHOW CAUSE
AND PRELIMINARY
INJUNCTION**

Upon consideration and filing of this Order to Show Cause by Complainant
and the annexed Affirmation of Kenneth P. Thompson, Esq. dated August 22, 2011, and
all exhibits attached thereto, and the Memorandum of Law in Support thereof, let the New York
County District Attorney's Office, Counsel for The People of The State of New York, show
cause, before the Honorable _____, at the Supreme Court of the State of New
York, 100 Centre Street, Room _____, New York County, New York, on _____, 2011
at _____ a.m./p.m. or as soon thereafter as counsel can be heard, why an order should not
be entered (i) disqualifying the New York County District Attorney's Office as prosecutors in the
above-captioned matter, and (ii) appointing a special prosecutor to prosecute the criminal
charges against Defendant Dominique Strauss-Kahn; and it is further,

ORDERED, that pending a hearing and ultimate determination of this application, any
further prosecution of this matter by the New York County District Attorney's Office be stayed;
and it is further,

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**MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO
DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE, APPOINT A SPECIAL
PROSECUTOR AND PRELIMINARY INJUNCTION TO STAY PROSECUTION BY THE
DISTRICT ATTORNEY PENDING THE HEARING AND DETERMINATION OF THE
UNDERLYING APPLICATION**

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, respectfully submits this memorandum of law in support of her motion to disqualify the New York County District Attorney's Office ("DA") from prosecuting the charges currently pending before this Court against Dominique Strauss-Kahn ("Defendant Strauss-Kahn") in People of the State of New York v. Dominique Strauss-Kahn pursuant to New York County Law Section 701 ("Section 701"). Because of the DA's actions, abuse of confidence, unfair treatment, bias and prejudices, the DA is unfit to try this case. Therefore, it is respectfully submitted that the Court should immediately disqualify the DA and appoint a special prosecutor with no biases and/or prejudices to ensure that confidence is returned to this process and that a fair prosecution of the criminal charges against Defendant Strauss-Kahn is ensured.

PRELIMINARY STATEMENT

On May 14, 2011, in Room 2806 of the Sofitel Hotel, Defendant Dominique Strauss-Kahn violently attacked and sexually assaulted [REDACTED], among other things, forcing his penis into [REDACTED] mouth against her will until he ejaculated in her mouth. As Assistant District Attorney John "Artie" McConnell advised the Court on May 19, 2011, the evidence against Defendant Strauss-Kahn is "substantial." However, in a shocking dereliction of duty, the DA has sabotaged Defendant Strauss-Kahn's prosecution. After [REDACTED] courageously revealed to authorities the details of the vicious sex crimes committed against her by Defendant Strauss-Kahn, the DA has subjected [REDACTED] verbal abuse and outright disrespect, and appears to have leaked highly damaging false statements about her to the press. In short, the DA has demonstrated clear bias and prejudice and this Court respectfully should appoint a special prosecutor to restore the confidence in prosecution of this matter.

The integrity of the public prosecutor is central to the rule of law in a democratic society. The DA is responsible for protecting the victims of crimes and holding criminals accountable for their acts. Unfortunately, the DA's handling of the prosecution against Defendant Strauss-Kahn has been inadequate and troubling. Therefore, as rape and sexual assault victims around the world watch the DA methodically destroy the criminal case it is charged with prosecuting, it is incumbent upon this Court to relieve the DA of its prosecutorial duties in this case and appoint a special prosecutor who will prosecute this case with complete fairness and restore the public confidence in this process and ensure that the actions of the DA do not deter other victims of sexual assaults from coming forward in the future.

FACTUAL BACKGROUND

I. Defendant Strauss-Kahn's Sexual Assault o.

On Saturday, May 14, 2011, in Sofitel Room 2806, Defendant Strauss-Kahn violently attacked and sexually assaulted an innocent hardworking Sofitel housekeeper whom he had never met.

During her shift on May 14, 2011 like any other. She was assigned to clean a number of hotel rooms, including Room 2806, which Defendant Strauss-Kahn was scheduled to check out of that day. Room 2806 is an expansive and luxurious suite that includes a separate bedroom, living room, and office, as well as multiple bathrooms and a hallway that joins the front of the suite to the back. Before she entered Room 2806, she believed that the room was unoccupied based on comments by one of her colleagues.

As she walked into the room, Defendant Strauss-Kahn descended upon her, completely naked. She was shocked that the room was indeed occupied and tried to leave. She, however, was unsuccessful. Defendant Strauss-Kahn had her trapped. More

specifically, Defendant Strauss-Kahn grabbed her breasts against her will and closed the door, preventing [redacted] from escaping. He then pushed [redacted] into a bedroom and tried to force his penis into her mouth. [redacted] begged for him to stop, and tried to escape the suite. But Defendant Strauss-Kahn blocked her and forced her to the back of the suite, away from any exit. He then pulled up the dress of [redacted] uniform and forcibly pulled down her pantyhose. He grabbed her vagina with so much force that [redacted] would feel pain upon urination for the next couple of days. Defendant Strauss-Kahn also injured [redacted] shoulder during his violent attack.

Having sequestered her in the back of the suite, Defendant Strauss-Kahn forced a helpless [redacted] her knees outside of a bathroom at the end of the hallway. He clutched her head and shoved his penis into her mouth. He then thrust his penis back and forth in her mouth, demanding "Suck my dick," until he ejaculated inside her mouth. Sated, Defendant Strauss-Kahn released [redacted] head. She immediately spit out his semen onto the carpet in disgust and fled the suite. The appalling, life-altering attack was finally over. Soon after her escape, [redacted] reported the sexual assault to her Housekeeping supervisors, hotel security staff, and later to detectives with the New York City Police Department ("NYPD") that same day.

II. Defendant Strauss-Kahn Fled the Sofitel

After sexually assaulting [redacted] Defendant Strauss-Kahn left the Sofitel hastily, leaving behind traces of his semen and bloody-tissues. He apparently met his daughter for a quick lunch before heading to the airport. On his way to the airport, Defendant Strauss-Kahn reportedly called his wife Anne Sinclair in France and confessed "I have a serious problem in New York." He was apprehended at John F. Kennedy International Airport a few hours later aboard an Air France flight to Paris, only minutes before takeoff.

III.

Shortly after being interviewed by the NYPD at the Sofitel, [REDACTED] was taken to a local hospital in an ambulance to be treated and examined. Hospital records confirm that she told the EMS workers that she was sexually assaulted by the occupant of a hotel room, who “pushed her down and stuck his penis in her mouth.” [REDACTED] also told the EMS workers about the pain she was experiencing in her shoulder.

At the hospital, [REDACTED] described her attack again, this time to doctors and nurses. She told the doctors and nurses that she entered a hotel room at the Sofitel to clean it when a naked man with “white hair” sexually assaulted her. At this time, she had no idea that the man who had attacked her was Defendant Strauss-Kahn or that he was the head of the International Monetary Fund and a leading candidate for the presidency in France. [REDACTED] explained to the medical staff that her attacker “forced oral sex” upon her and “penetrated her mouth with his penis” by holding her by the hair and forcing her head onto his penis. She also explained that she then felt “something wet and sour” in her mouth, which she “spit it out onto the carpet” of the hotel room.

[REDACTED] underwent a sexual assault forensic examination at the hospital, during which the doctors and nurses noted that she was “tearful” as she recounted the sexual assault. The medical staff also reported that she paused while talking about the forced fellatio, the most traumatic part of the gruesome attack. Additionally, the doctors and nurses confirmed the “redness” of [REDACTED] vagina, supporting her account that Defendant Strauss-Kahn violently grabbed her crotch. The doctors and nurses took pictures of this area, apparently to preserve evidence of the sexual assault.

IV. The District Attorney's Improper Actions

The DA has overseen the prosecution of Defendant Strauss-Kahn since his arrest on May 14, 2011. Affirmation of Kenneth P. Thompson (“Thompson Aff.”) at ¶ 3. Nevertheless, there was a complete failure, or even an attempt, to interrogate Defendant Strauss-Kahn on May 14, 2011 for hours after he was taken into custody by the NYPD and before he asked to speak with his attorney, as is routine practice for any other criminal defendant who is being charged with a serious sex crime. Thompson Aff. at ¶ 4. Counsel for [REDACTED] asked District Attorney Cyrus Vance why there was no District Attorney present at Special Victims while Defendant Strauss-Kahn was in custody, but District Attorney Vance could not answer the question and only indicated that he would look into it. Thompson Aff. at ¶ 5. To date, neither District Attorney Vance nor any of the prosecutors working on the Strauss-Kahn case have explained this stunning failure to even attempt to interview Defendant Strauss-Kahn for hours before he asked to speak with his lawyer. Id.

Additionally, The DA submitted a letter pursuant to its obligations under Brady v. Maryland, 373 U.S. 83 (1963) (“Brady”), without first seeking in camera review of the “evidence” to determine whether the “facts” disclosed were indeed encompassed by Brady. Thompson Aff. at ¶ 6. Moreover, the DA did not attempt to file the letter under seal with a protective order to ensure that [REDACTED] personal information concerning her immigration status and prior rape remained confidential. Id. Such actions will undoubtedly have a chilling effect and deter future victims of crime from coming forward who may have issues concerning their own immigration status.

The DA also failed to thoroughly refute multiple, baseless articles in the New York Post that falsely described [REDACTED] as a prostitute and hooker who was “turning tricks” while in

the protective custody of the DA. Thompson Aff. at ¶ 7. Instead of refuting these outrageous and false allegations, when asked about the report, a senior prosecutor was quoted as saying “I can’t say with 100 percent certainty that it’s not true” regarding whether [redacted] was “turning tricks” in the hotel in Brooklyn where the DA placed her following the sexual assault. Id.

Most egregiously, the DA also appears to have leaked false information to the press that may have irreparably damaged [redacted] credibility and severely undermined the criminal case against Defendant Strauss-Kahn. Thompson Aff. at ¶ 8. Specifically, the New York Times attributed to “law enforcement sources” -- which we believe originated from the DA’s office -- damaging and false information regarding a telephone conversation between [redacted] and a prisoner detained in an Arizona detention facility. Thompson Aff. at ¶ 10. The New York Times cited these “law enforcement sources” in reporting that a day after the sexual assault and while talking about Defendant Strauss-Kahn, [redacted] told the prisoner in Arizona words to the effect, “Don’t worry, he has a lot of money. I know what I’m doing,” as if she was scheming to shake down the Defendant for money. Id. Based on a translation of the recording in question on July 27, 2011, by a Fulani interpreter hired by the DA’s office, this is an inaccurate translation of the telephone conversation in question.¹ Thompson Aff. at ¶ 11. Although the DA knows that the New York Times articles were based upon false information, to date, the DA has not publicly refuted the accuracy of the reports, although those false reports have subjected [redacted] to public scorn and disdain and may serve destroy the criminal case against Defendant Strauss-Kahn. Id.

¹ It has been our intention to file this motion for weeks. However, the DA has steadfastly refused to provide [redacted] with a copy of the recording in question. As a result, on July 11, 2011, [redacted] made a Freedom of Information Act request for the recording from the United States Immigration and Customs Enforcement Department (commonly referred to as “ICE”). To date, despite also providing ICE with executed authorizations from [redacted] and the other party to the conversation, we have yet to receive the recording.

V. Procedural History

Defendant Strauss-Kahn was arrested on May 14, 2011. Two days later, on May 16, 2011, he was denied bail by Manhattan Criminal Court Judge Melissa C. Jackson. On May 19, 2011, he was indicted by the grand jury on multiple charges associated with his violent sexual assault of [REDACTED]. Defendant Strauss-Kahn pled not guilty to all charges on June 6, 2011.

On July 1, 2011, the same date that false reports about [REDACTED] apparently leaked by the DA, appeared in multiple New York Times’ articles and the DA filed its Brady letter, this Court ordered the release of Defendant Strauss-Kahn from house arrest without bail. Thompson Aff. at ¶ 14. The next hearing – which has already been postponed twice – is now scheduled for August 23, 2011, when the DA will announce whether it plans to proceed with the case against Defendant Strauss-Kahn. Thompson Aff. at ¶ 21.

ARGUMENT

I. LEGAL STANDARD FOR DISQUALIFICATION

New York courts have long had the authority to disqualify prosecutors. See People v. Zimmer, 51 N.Y.2d 390, 396 (1980); People v. Gallagher, 143 A.D.2d 929, 933 (N.Y. App. Div. 2d Dep’t 1988); People v. Schrager, 346 N.Y.S.2d 101 (N.Y. Sup. Ct. Queens Cty. 1973). New York County Law Section 701 provides that “[w]henver the district attorney of any county and such assistants as he or she may have ... are disqualified from acting in a particular case to discharge his or her duties at a term of any court, a superior criminal court in the county wherein the action is triable may, by order ... appoint some attorney at law ... to act as special district attorney during the absence, inability or disqualification of the district attorney.” N.Y. County Law § 701(1)(a)-(b).

Courts have generally held that public prosecutors should only be removed to protect against “actual prejudice arising from a demonstrated conflict of interest or a substantial risk of an abuse of confidence.” People v. Jaquish, 853 N.Y.S.2d 485, 488 (N.Y. Co. Ct. 2007) (citing Zimmer, 51 N.Y.2d at 395). While an appearance of impropriety, standing alone, will not usually justify disqualification, “[t]here are recognizable instances where the appearance of impropriety is so strong that the failure to appoint a special prosecutor would ‘weaken the appearance of fairness.’” People v. O’Connell, 8 Misc. 3d 1009(A), 801 N.Y.S.2d 780 (N.Y. Crim. Ct. 2005).

While the DA may argue that [redacted] lacks “standing” to bring this motion, New York County Law Section 701 does not require that one be a criminal defendant to bring the instant motion. To the contrary, Section 701 has no standing requirement and it is for the Court, either on its own or when facts come to its attention, to ensure the fair administration of justice. See, e.g., Murphy v. Dwyer, 476 N.Y.S.2d 217 (3d Dep’t 1984) (no standing issue raised when non-party town attorney obtained order to show cause for appointment of special prosecutor to oppose appeal from criminal conviction that district attorney did oppose); Holtzman v. Hellenbrand, 515 N.Y.S.2d 843 (2d Dep’t 1987) (no standing issue raised where attorney for criminal defendant sought appointment of special prosecutor to prosecute criminal charges against criminal defendant’s alleged victim). Obviously, as the victim of a sexual crime,

[redacted] is an interested party to the Strauss-Kahn prosecution and has a right to ensure and take steps to ensure that the DA is not prejudiced and/or biased and to make certain that the public retains confidence in the criminal justice system so as to not deter other victims, particularly victims of sex crimes, from coming forward in the future.

II. EVIDENCE OF THE DISTRICT ATTORNEY OFFICE'S IMPROPRIETES

A. The District Attorney's Office Abusive Treatment Of

For weeks, the DA has attempted to undermine the credibility of _____ and the successful prosecution of the charges pending against Defendant Strauss-Kahn.² Thompson Aff. at ¶ 15. Shockingly, the evidence is clear that, in spite of the substantial evidence (both forensic and circumstantial) supporting _____ account that she was sexually assaulted by Defendant Strauss-Kahn, the lead prosecutor handling this case was determined not to bring this case to trial before ever hearing _____ give her account of what Defendant Strauss-Kahn did to her in Room 2806. Id. For example, on June 9, 2011, Assistant District Attorney Joan Illuzzi-Orbon (“ADA Illuzzi-Orbon”) told _____ counsel, before she ever heard _____ personally describe how Defendant Strauss-Kahn violently attacked and sexually assaulted her at the Sofitel hotel, that “No one with half a brain would ever put her on the stand.” Thompson Aff. at ¶ 16. Additionally, later that same day, ADA Illuzzi-Orbon falsely claimed to Mr. Thompson that, _____ had changed her account about what Defendant Strauss-Kahn said and did to her during the sexual assault, only to admit the very next day that she had made a mistake about _____ account. Id.

The DA has also treated _____ abusively, victimizing her further. Thompson Aff. at ¶ 17. A key member of the prosecution team repeatedly screamed at and outright disrespected her. Id. On June 9, 2011, for instance, Assistant District Attorney Ann Prunty (“ADA Prunty”) screamed at _____ within earshot of _____ daughter and demanded that she “get out” of ADA Illuzzi-Orbon’s office. Id. ADA Illuzzi-Orbon admitted as much on June 20, 2011,

² A copy of an August 8, 2011 letter sent from Mr. Thompson to District Attorney Vance and the members of the Strauss-Kahn prosecution team that details in full the DA’s misconduct is annexed to the affirmation of Kenneth P. Thompson as Exhibit 2. Thompson Aff. at ¶ 24.

confirming that ADA Prunty had kicked _____ a victim of a sex crime, out of the office. Id. The DA also investigated one of her relatives, repeatedly insisted that she come into the office while she was experiencing substantial shoulder pain as a result of the sexual assault, put _____ and her daughter in a Brooklyn hotel for weeks that lacked any meaningful type of security and completely failed to inform _____ or her counsel of the outcome of a purported investigation into a death threat that was made against _____ in June.³ Id.

B. The District Attorney's Office Conflict Of Interest

Outrageously, the DA completely failed to disclose to _____ or her counsel that Marc A. Agnifilo, an attorney defending Defendant Strauss-Kahn in the criminal case, is married to Assistant District Attorney Karen Friedman-Agnifilo ("ADA Friedman-Agnifilo"), the Chief of the Trial Division and the direct supervisor of Assistant District Attorney John Irwin, who is overseeing the Strauss-Kahn prosecution team. Thompson Aff. at ¶ 18. Moreover, the DA failed to notify prosecutors and other staff throughout the Office in writing or otherwise that ADA Friedman-Agnifilo had recused herself from the case, leaving open the possibility that another member of the Office might inadvertently disclose confidential information to ADA Friedman-Agnifilo regarding the pending prosecution. Thompson Aff. at ¶ 19. Additionally, when counsel for _____ met with District Attorney Cyrus Vance on June 22, 2011, Mr. Vance admitted that no letter or email was sent to the prosecutors in his office advising them of ADA Friedman-Agnifilo's recusal from the case.

New York courts have consistently held that the existence of a conflict of interest _____ disqualifies the district attorney and requires the appointment a special prosecutor. People v. Wyatt, 530 N.Y.S.2d 460, 462 (N.Y. Crim. Ct. Bronx Cty. 1988) (disqualifying Bronx District

³ The death threat was left on the voicemail of Mr. Thompson, who promptly notified the DA. Thompson Aff. at ¶17.

Attorney's Office from prosecuting case due to the conflict of interest resulting in actual prejudice to defendants when District Attorney's office moved to dismiss charges against cross-complainants). Significantly, "in cases where there is a blood relation between an assistant district attorney . . . the argument regarding the appearance of impropriety is much more powerful." People v. O'Connell, 801 N.Y.S.2d 780 (N.Y. City Crim. Ct. Kings Cty. 2005); see also People v. Schrager, 346 N.Y.S.2d 101 (N.Y. Sup. Ct. Queens Cty. 1973) (granting motion to appoint special prosecutor due to "the professional and personal relationships which th[e] defendant shared with the members of the District Attorney's staff," because "public confidence in the office demands that there be no conflict of interest or appearance of a conflict."); People v. Nelson, 647 N.Y.S. 438, 445 (N.Y. Crim. Ct. New York Cty. 1995) (stating "[t]o be sure, a prosecutor would be well advised to step away from a case in which his or her impartiality could reasonably be questioned").

Here, the spousal relationship between one of Defendant Strauss-Kahn's lawyers in this case and the direct supervisor of the head of the prosecution team constitutes a serious conflict of interest. A spousal relationship creates perhaps the greatest conflict of any familial relationship, and certainly one far greater than a mere blood relation. Spouses converse daily on an intimate level and often more frequently than individuals who share a blood relationship. Therefore, if a blood relation creates a "powerful" appearance of impropriety, a spousal relationship should create an irrefutable conflict. Moreover, the Strauss-Kahn prosecution generates international news, likely sparking substantial interest among DA staff and increasing the risk of an "abuse of confidence." See People v. Taylor, 142 A.D.2d 410, 420 (N.Y. App. Div. 2d Dep't 1988) aff'd, 75 N.Y.2d 277, 552 N.E.2d 131 (1990) (finding that substantial risk of abuse of confidence is legitimate ground for disqualification). Accordingly, the conflict of interest between Defendant

Strauss-Kahn's attorney Marc Agnifilo and ADA Friedman-Agnifilo are sufficient grounds to disqualify the entire DA and appoint a special prosecutor to continue the prosecution.

C. The District Attorney's Office's Apparent Destruction of Credibility And Sabotage of The Criminal Case Against Strauss-Kahn

The DA's apparent leak of utterly false information to the media regarding a telephone conversation between [redacted] and a prisoner in a detention facility in Arizona provides stark evidence of "actual improprieties" and "abuse of confidence," justifying disqualification. On June 30, 2011, Assistant District Attorney Daniel Alonso ("ADA Alonso") and ADA Illuzzi-Orbon called [redacted] counsel and stated that [redacted] had been captured on tape talking about Defendant Strauss-Kahn with that prisoner the day after the sexual assault and said words to the effect, "Don't worry. This guy has a lot of money. I know what I'm doing." Thompson Aff. at ¶ 9. Moreover, in two articles published on July 1, 2011,⁴ the New York Times quoted "two law enforcement sources" who stated that [redacted] was recorded talking on the telephone with an inmate at the Eloy Federal Contract Facility in Eloy, Arizona on May 15, 2011, the day after she was sexually assaulted. Thompson Aff. at ¶ 10. The sources falsely claimed that [redacted] told the prisoner words to the effect of, "Don't worry, this guy has a lot of money. I know what I'm doing." Id. While these representations were false, they severely damaged [redacted] credibility, raised questions about her motives and may be fatal to the criminal case against Defendant Strauss-Kahn. Furthermore, despite agreeing on June 30, 2011 to allow [redacted] and her counsel to listen to the disputed recording, the DA refused to allow [redacted] and her attorneys to listen to the taped conversation that is so crucial to her case, for an incredible 28 days, allowing [redacted] reputation to become further tarnished in the eyes of

⁴ The two articles were titled "Strauss-Kahn Prosecution Said to Be Near Collapse" and "Strauss-Kahn Accuser's Call Alarmed Prosecutors," annexed to the affirmation of Kenneth P. Thompson as Exhibit 1.

the public for almost a month. Thompson Aff. at ¶ 11. Upon listening to the translation of that recording on July 27, 2011 by a Fulani interpreter retained by the DA, it became clear that

purported statements captured on tape as conveyed to [redacted]'s counsel by ADAs Alonso and Iluzzi-Orbon on June 30, 2011, and apparently leaked by the DA to the New York Times, were false. Id.

Conspicuously, the DA did not include [redacted] purported recorded comments in its Brady letter, which confirms that the DA knew the statements were not true. Nevertheless, the DA never publicly refuted the New York Times report. Id. Additionally, despite counsel's request in writing, the DA has refused to confirm that an internal investigation has been conducted into these potentially damaging leaks, or that appropriate discipline has been taken against the sources of those false representations. Thompson Aff. at ¶ 12.

The DA also provided false information to Defendant Strauss-Kahn's attorneys concerning [redacted]'s actions immediately following the sexual assault. Specifically, the DA utterly failed to obtain the electronic time-card entry records from the Sofitel for Room 2820 prior to informing Defendant Strauss-Kahn's lawyers in its Brady letter, that [redacted] allegedly cleaned Room 2820 directly after she had been attacked by Defendant Strauss-Kahn in Room 2806. Thompson Aff. at ¶ 20. A summary review of the electronic time-card data unequivocally disproves this theory. Id. Accordingly, the DA's leak of detrimental false information and blatant failure to correct the inaccurate news reports have served to further damage [redacted] credibility, reputation and character, and help further weaken the criminal case against Defendant Strauss-Kahn. Id. The DA's actions in spreading this false information and blatant failure to correct inaccurate news reports also unquestionably satisfy the standard of

“actual cause as opposed to an appearance of impropriety ... necessary for court intervention.”

People v. Anonymous, 481 N.Y.S.2d 987, 990 (N.Y. Crim. Ct. N.Y. Cty. 1984).

III. A PRELIMINARY INJUNCTION STAYING THE CRIMINAL PROSECUTION PENDING THE HEARING AND DETERMINATION OF THE UNDERLYING APPLICATION IS NECESSARY AND APPROPRIATE

A preliminary injunction staying the prosecution of Defendant Strauss-Kahn pending the hearing and ultimate determination of the application for disqualification of the DA and appointment of a special prosecutor is necessary to ensure that The People of the State of New York (“The People”) can properly and fairly hold Defendant Strauss-Kahn criminally liable for the violence and sexual assault that he committed against To obtain a preliminary injunction, the moving party must show: (1) the prospect of irreparable injury if the provisional relief is withheld,⁵ (2) a likelihood of success on the merits, and (3) that the balance of the equities tips in their favor. 61 West 62 Owners Corp. v. CGM EMP LLC, 906 N.Y.S.2d 549, 553 (1st Dep’t 2010) (citing Doe v. Axelrod, 73 N.Y.2d 748, 750 (1988)). All of these elements can be established in this matter.

First, . . . and The People will suffer irreparable harm if a preliminary injunction is not granted. . . . is the victim of a violent attack and sexual assault by Defendant Strauss-Kahn and she, and The People, are entitled to have him held accountable at a criminal trial for his unlawful conduct. However, the New York County District Attorneys’ Office will likely dismiss the criminal charges against Defendant Strauss-Kahn, potentially as early as tomorrow when the next court date is scheduled in this matter. If the criminal charges against Defendant Strauss-Kahn are actually dismissed, he will never be held accountable at a criminal

⁵ For purposes of a preliminary injunction, “irreparable” harm is “a continuing harm resulting in substantial prejudice by the acts sought restrained if permitted to continue pendente lite.” Chrysler Corp. v. Fedders Corp., 63 A.D.2d 567, 569 (1st Dep’t 1978).

trial for the horrific crimes that he committed against [REDACTED] and a miscarriage of justice, which cannot be remedied, will have been allowed to occur.

Second, [REDACTED] has established a likelihood of success on the merits for the reasons set forth above. It is clear that [REDACTED] and The People will be prejudiced by the DA's continued prosecution of this matter due to conflicts of interest, substantial risks of an abuse of confidence, unfair treatment, and bias and prejudices attendant to the DA's involvement. The appearance of impropriety is so strong that the failure to appoint a special prosecutor weakens the appearance of fairness in the criminal justice process at large and the ability of the DA to fairly prosecute high profile criminal defendants.

Third, the balance of equity clearly favors disqualification [REDACTED] and The People are entitled to a criminal prosecution of Defendant Strauss-Khan, free from any conflicts of interest and appearance of impropriety. There is absolutely no prejudice to be suffered by the DA, or Defendant Strauss-Kahn, through the granting of a preliminary injunction. In fact, the only prejudice likely to be suffered is again, [REDACTED] and The People who are entitled to a fair prosecution of Defendant Strauss-Kahn following his Grand Jury indictment, by a grand jury that reviewed and analyzed the substantial evidence against Defendant Strauss-Kahn. Without question, a grand jury indictment should not be disregarded because the DA fears negative publicity that might result from a loss at trial. Ultimately, once the underlying relief requested herein is either granted or denied, the criminal prosecution of Defendant Strauss-Khan will proceed.

Accordingly, due to the irreparable injury that will be suffered absent a preliminary injunction, the Court should order the requested provisional relief and stay the prosecution of this matter by the DA pending the ultimate hearing and determination of the underlying application.

CONCLUSION

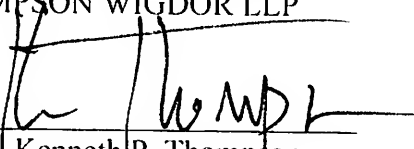
For the foregoing reasons . . . respectfully requests that the Court grant her application to disqualify the New York County District Attorney's Office from prosecuting the charges currently pending before this Court against Defendant Strauss-Kahn, appoint a special prosecutor and issue a preliminary injunction staying any further prosecution of this matter by the New York County District Attorney's Office pending the hearing and ultimate determination of this application.

Dated: August 22, 2011
New York, NY

Respectfully submitted,

THOMPSON WIGDOR LLP

By:


Kenneth P. Thompson
Douglas H. Wigdor

85 Fifth Avenue
New York, NY 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845

ORDERED, that a copy of this Order, and all moving papers, shall be served by overnight mail on the New York County District Attorneys' Office, and Defendant Strauss-Kahn, and that such service on or before _____, 2011 shall be deemed good and sufficient service; and it is further,

ORDERED, that the New York County District Attorneys' Office, Counsel for The People of the State of New York, and Defendant Dominique Strauss-Kahn, shall have _____ days including _____, 2011 within which to serve by overnight mail, and file, any papers in opposition; and it is further,

ORDERED, that any reply papers shall be served by overnight delivery on or before _____, 2011.

ENTERED:

Justice of the Supreme Court

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: CRIMINAL TERM**

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Complainant,

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CENTRAL CLERK'S OFFICE

APR 12 2011

SUPREME COURT
CRIMINAL TERM
NEW YORK COUNTY
Index No. 2011NY035773

**AFFIRMATION OF
KENNETH P. THOMPSON**

I, Kenneth P. Thompson, hereby declare under penalty of perjury:

1. I am a member of the bar of the state of New York and of the law firm Thompson Wigdor LLP, attorneys for _____ and as such, I am fully familiar with the facts and circumstances of this matter.

2. I respectfully submit this affirmation, and the exhibits attached hereto, in support of _____ order to show cause to (i) disqualify the New York County District Attorney's Office ("DA"), from prosecuting the charges currently pending before this Court against Dominique Strauss-Kahn ("Defendant Strauss-Kahn") in The People of the State of New York v. Dominique Strauss-Kahn, pursuant to New York County Law Section 701 ("Section 701"), and (ii) appoint a special prosecutor to prosecute the criminal charges against Defendant Strauss-Kahn.

3. The DA has overseen the prosecution of Defendant Strauss-Kahn since his arrest on May 14, 2011. The integrity of the public prosecutor is central to the rule of law in a

democratic society. The DA is responsible for protecting victims of crimes and holding criminals responsible for their acts. Unfortunately, the DA's handling of the prosecution against Defendant Strauss-Kahn has been inadequate and troubling.

4. There was a complete failure, or even an attempt, to interrogate Defendant Strauss-Kahn on May 14, 2011 for hours after he was taken into custody by the NYPD and before he asked to speak with his attorney.

5. At a meeting on June 22, 2011 with District Attorney Cyrus Vance and my partner Douglas H. Wigdor, we asked District Attorney Vance why Strauss-Kahn was not questioned and whether there was an Assistant District Attorney present at Special Victims while Defendant Strauss-Kahn was in custody, but District Attorney Vance could not answer these question and only indicated that he would look into it. To date, neither District Attorney Vance nor any of the prosecutors working on the Strauss-Kahn case have explained this stunning failure to even attempt to interview Defendant Strauss-Kahn for hours before he asked to speak with his lawyer.

6. The DA submitted a letter pursuant to its obligations under Brady v. Maryland, 373 U.S. 83 (1963) ("Brady"), without first seeking in camera review of the "evidence" to determine whether the "facts" disclosed were indeed encompassed by Brady. The DA did not attempt to file the letter under seal with a protective order to ensure that personal information concerning her immigration status and prior rape remained confidential. Such actions will undoubtedly have a chilling effect and deter future victims of crime from coming forward who may have issues concerning their immigration status.

7. The DA also failed to thoroughly refute multiple, baseless articles in the New York Post that falsely described as a prostitute and hooker who was "turning tricks"

while in the protective custody of the DA. For example, when asked about the report, a senior prosecutor was quoted in the New York Post as saying “I can’t say with 100 percent certainty that it’s not true” regarding whether [redacted] was “turning tricks” in the hotel in Brooklyn where the DA placed her following the sexual assault.

8. The DA appears to have leaked false information to the press that irreparably damaged [redacted]’s credibility and severely weakened the case against Defendant Strauss-Kahn.

9. On June 30, 2011, Assistant District Attorneys Daniel Alonso and Joan Illuzzi-Orbon called [redacted] counsel and stated that [redacted] had been captured on tape talking about Defendant Strauss-Kahn with that prisoner a day after the sexual assault said words to the effect, “Don’t worry. This guy has a lot of money. I know what I’m doing.”

10. The New York Times attributed to “law enforcement sources” – which we believe originated from the DA’s Office – damaging and false information regarding a telephone conversation between [redacted] and a prisoner detained in an Arizona detention facility. The New York Times also cited these “law enforcement sources” reporting that a day after the sexual assault and while talking about Defendant Strauss-Kahn, [redacted] told the prisoner in Arizona words to the effect, “Don’t worry, he has a lot of money. I know what I’m doing,” as if she was scheming to shake down the Defendant for money. These articles were titled “Strauss-Kahn Prosecution Said to Be Near Collapse” and “Strauss-Kahn Accuser’s Call Alarmed Prosecutors,” true and correct copies of which are attached hereto as Exhibit 1.

11. Furthermore, despite agreeing on June 30, 2011 to allow [redacted] and her counsel to listen to the disputed recording, the DA refused to allow [redacted] and her attorneys to listen to the taped conversation that is so crucial to her case, for an incredible 28 days. Based

on a translation of the recording in question on July 27, 2011, by a Fulani interpreter hired by the DA's office, this is an inaccurate translation of the telephone conversation in question. Although the DA knows that the New York Times articles were based upon false information, to date, the DA has not publicly refuted the accuracy of the reports, although those false reports have subjected [redacted] to public scorn and disdain, raised questions about her motives and may now serve to destroy the criminal case against Defendant Strauss-Kahn.

12. Additionally, despite [redacted] counsel's request in writing, the DA has refused to confirm that an internal investigation has been conducted into these potentially damaging leaks, or that appropriate discipline has been taken against the sources of those false representations.

13. Moreover, despite repeated requests, the DA has not permitted [redacted] to obtain a copy of the disputed tape recordings. Instead, [redacted] has had to file a Freedom of Information Request with Immigration and Custom Enforcement ("ICE") to obtain the recording at issue independently. While this motion would have been filed shortly after July 6, 2011, when we informally requested to the DA himself that he appoint a special prosecutor, I have waited to file this motion until I obtained a copy of the recording in question so that it could be accurately transcribed and attached to this motion. Because of the DA's complete and unjustified refusal to provide [redacted] with a copy of that recording, I am still waiting for ICE to deliver the disputed recording. Unfortunately, various reports have indicated that the DA intends to dismiss the case against Mr. Strauss-Kahn as early as tomorrow without permitting us an opportunity to transcribe the tapes and provide them to the Court to demonstrate the DA's prejudice, abuse of confidence and bias. I would have filed this motion sooner had the DA turned over the disputed recording as requested and/or had ICE delivered the tapes pursuant to our request made on July

11, 2011. As such, it is respectfully submitted that the Court should enter a preliminary injunction so as to afford additional time to transcribe the recording at issue and provide it to the Court as further evidence of the DA's prejudice, abuse of confidence and bias.

14. On July 1, 2011, the same date that false reports about apparently leaked by the DA appeared in multiple New York Times' articles and the DA filed its Brady letter, this Court ordered the release of Defendant Strauss-Kahn from house arrest without bail.

15. Additionally, the evidence is clear that, in spite of the substantial evidence (both forensic and circumstantial) supporting account that she was sexually assaulted by Defendant Strauss-Kahn, the lead prosecutor handling this case was determined not to bring this case to trial before ever hearing give her the complete account of what Defendant Strauss-Kahn did to her in the hotel room of the Sofitel.

16. For example, on June 9, 2011, Assistant District Attorney Joan Illuzzi-Orbon ("ADA Illuzzi-Orbon") told me, before she ever heard personally describe how Defendant Strauss-Kahn violently attacked and sexually assaulted her at the Sofitel hotel, that "No one with half a brain would ever put her on the stand." Later that same day, ADA Illuzzi-Orbon also falsely claimed to me that had changed her account about what Defendant Strauss-Kahn said and did to her during the sexual assault, only to admit the very next day that she had made a mistake about account.

17. The DA has also treated abusively, victimizing her further. According to and her young daughter, a key member of the prosecution team repeatedly screamed at and outright disrespected . They reported to me that on June 9, 2011, Assistant District Attorney Ann Prunty ("ADA Prunty") screamed at within earshot of laughter and demanded that she "get out" of ADA Illuzzi-Orbon's office. ADA

Illuzzi-Orbon admitted as much on June 20, 2011, confirming that ADA Prunty had kicked a victim of a sex crime, out of the office. The DA also investigated one of her relatives, repeatedly insisted that she come into the office while she was experiencing shoulder pain as a result of the sexual assault, put [redacted] and her daughter in a hotel in Brooklyn for weeks that lacked any meaningful type of security and completely failed to inform [redacted] or her attorneys of the outcome of its purported investigation into a death threat that was made against [redacted] June. The death threat was left on my voicemail and I promptly notified the DA about it.

18. The DA also completely failed to disclose to [redacted] or her counsel that Marc A. Agnifilo, an attorney defending Defendant Strauss-Kahn in the criminal case, is married to Assistant District Attorney Karen Friedman-Agnifilo (“ADA Friedman-Agnifilo”), the Chief of the Trial Division and the direct supervisor of Assistant District Attorney John Irwin, who is overseeing the Strauss-Kahn prosecution team.

19. Moreover, the DA failed to notify prosecutors and other staff throughout the DA’s Office in writing or otherwise that Ms. Friedman-Agnifilo had recused herself from the case, leaving open the possibility that another member of the Office might inadvertently disclose confidential information to ADA Friedman-Agnifilo regarding the pending prosecution.

20. The DA failed to obtain the electronic time-card entry records from the Sofitel for Room 2820 prior to informing Defendant Strauss-Kahn’s lawyers in its Brady letter that [redacted] allegedly cleaned Room 2820 directly after she had been attacked by Defendant Strauss-Kahn in Room 2806. A summary review of the electronic time-card data unequivocally disproves this theory. Accordingly, the DA’s disclosure of detrimental false information and its blatant failure to correct the inaccurate news reports have served to further damage

unfair treatment, and bias and prejudices attendant to the DA's involvement. The appearance of impropriety is so strong that the failure to appoint a special prosecutor weakens the appearance of fairness in the criminal justice process at large and the ability of the DA to fairly prosecute high profile criminal defendants. A true and correct copy of an August 8, 2011 letter that I sent to District Attorney Vance and the members of the Strauss-Kahn prosecution team that details in full the DA's misconduct is annexed to this affirmation as Exhibit 2.

25. The balance of equity clearly favors disqualification. and The People are entitled to a criminal prosecution of Defendant Strauss-Khan, free from any conflicts of interest and appearance of impropriety. There is absolutely no prejudice to be suffered by the District Attorney's office, or Defendant Strauss-Kahn, through the granting of a preliminary injunction. In fact, the only prejudice likely to be suffered is against and The People who are entitled to a fair prosecution of Defendant Strauss-Kahn following his Grand Jury indictment. A Grand Jury indictment should not be disregarded because the District Attorney's Office fears negative publicity that might result from a loss at trial. Ultimately, once the underlying relief requested herein is either granted or denied, the criminal prosecution of Defendant Strauss-Khan will proceed.

Dated: August 22, 2011
New York, New York


Kenneth P. Thompson

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June 30, 2011

Strauss-Kahn Prosecution Said to Be Near Collapse

By JIM DWYER, WILLIAM K. RASHBAUM and JOHN ELIGON

The sexual assault case against Dominique Strauss-Kahn is on the verge of collapse as investigators have uncovered major holes in the credibility of the housekeeper who charged that he attacked her in his Manhattan hotel suite in May, according to two well-placed law enforcement officials.

Although forensic tests found unambiguous evidence of a sexual encounter between Mr. Strauss-Kahn, a French politician, and the woman, prosecutors now do not believe much of what the accuser has told them about the circumstances or about herself.

Since her initial allegation on May 14, the accuser has repeatedly lied, one of the law enforcement officials said.

Senior prosecutors met with lawyers for Mr. Strauss-Kahn on Thursday and provided details about their findings, and the parties are discussing whether to dismiss the felony charges. Among the discoveries, one of the officials said, are issues involving the asylum application of the 32-year-old housekeeper, who is Guinean, and possible links to people involved in criminal activities, including drug dealing and money laundering.

Prosecutors and defense lawyers will return to State Supreme Court in Manhattan on Friday morning, when Justice Michael J. Obus is expected to consider easing the extraordinary bail conditions that he imposed on Mr. Strauss-Kahn in the days after he was charged.

Indeed, Mr. Strauss-Kahn could be released on his own recognizance, and freed from house arrest, reflecting the likelihood that the serious charges against him will not be sustained. The district attorney's office may try to require Mr. Strauss-Kahn to plead guilty to a misdemeanor, but his lawyers are likely to contest such a move.

The revelations are a stunning change of fortune for Mr. Strauss-Kahn, 62, who was considered a strong contender for the French presidency before being accused of sexually assaulting the woman who went to clean his luxury suite at the Sofitel New York.

A lawyer for the woman, Kenneth P. Thompson, in an email message, did not offer a direct rebuttal to the allegations.

“Nothing changes one very important fact, namely, that Dominique Strauss-Kahn violently sexually assaulted the victim inside of that hotel room at the Sofitel,” he said.

Prosecutors from the office of the Manhattan district attorney, Cyrus R. Vance Jr., who initially were emphatic about the strength of the case and the account of the victim, plan to tell the judge on Friday that they “have problems with the case” based on what their investigators have discovered, and will disclose more of their findings to the defense. The woman still maintains that she was attacked, the officials said.

“It is a mess, a mess on both sides,” one official said.

According to the two officials, the woman had a phone conversation with an incarcerated man within a day of her encounter with Mr. Strauss-Kahn in which she discussed the possible benefits of pursuing the charges against him. The conversation was recorded.

That man, the investigators learned, had been arrested on charges of possessing 400 pounds of marijuana. He is among a number of individuals who made multiple cash deposits, totaling around \$100,000, into the woman’s bank account over the last two years. The deposits were made in Arizona, Georgia, New York and Pennsylvania.

The investigators also learned that she was paying hundreds of dollars every month in phone charges to five companies. The woman had insisted she had only one phone and said she knew nothing about the deposits except that they were made by a man she described as her fiancé and his friends.

In addition, one of the officials said, she told investigators that her application for asylum included mention of a previous rape, but there was no such account in the application. She also told them that she had been subjected to genital mutilation, but her account to the investigators differed from what was contained in the asylum application.

In recent weeks, Mr. Strauss-Kahn’s lawyers, Benjamin Brafman and William W. Taylor III, have made it clear that they would make the credibility of the woman a focus of their case. In a May 25 letter, they said they had uncovered information that would “gravely undermine the credibility” of the accuser.

Still, it was the prosecutor’s investigators who found the information about the woman.

The case involving Mr. Strauss-Kahn has made international headlines and renewed attention on accusations that he had behaved inappropriately toward women in the past, while, more

broadly, prompting soul-searching among the French about the treatment of women.

The revelations about the investigators' findings are likely to buttress the view of Mr. Strauss-Kahn's supporters, who complained that the American authorities had rushed to judgment in the case.

Some of Mr. Strauss-Kahn's allies even contended that he had been set up by his political rivals, an assertion that law enforcement authorities said there was no evidence to support.

Mr. Strauss-Kahn resigned from his post as managing director of the International Monetary Fund in the wake of the housekeeper's accusations and was required to post \$1 million bail and a \$5 million bond.

He also agreed to remain under 24-hour home confinement while wearing an ankle monitor and providing a security team and an armed guard at the entrance and exit of the building where he was living. The conditions are costing Mr. Strauss-Kahn \$250,000 a month.

Prosecutors had sought the restrictive conditions in part by arguing that the case against Mr. Strauss-Kahn was a strong one, citing a number of factors, including the credibility of his accuser, with one prosecutor saying her story was "compelling and unwavering."

In the weeks after making her accusations, the woman, who arrived in the United States from Guinea in 2002, was described by relatives and friends as an unassuming and hard-working immigrant with a teenage daughter. She had no criminal record, and had been a housekeeper at the Sofitel for a few years, they said.

Mr. Strauss-Kahn was such a pariah in the initial days after the arrest that neighbors of an Upper East Side apartment building objected when he and his wife tried to rent a unit there. He eventually rented a three-story town house on Franklin Street in TriBeCa.

Under the relaxed conditions of bail to be requested on Friday, the district attorney's office would retain Mr. Strauss-Kahn's passport but he would be permitted to travel within the United States.

The woman told the authorities that she had gone to Mr. Strauss-Kahn's suite to clean it and that he emerged naked from the bathroom and attacked her. The formal charges accused him of ripping her pantyhose, trying to rape her and forcing her to perform oral sex; his lawyers say there is no evidence of force and have suggested that any sex was consensual.

After the indictment was filed, Mr. Vance spoke briefly on the courthouse steps addressing hundreds of local and foreign reporters who had been camped out in front of the imposing stone edifice. He characterized the charges as "extremely serious" and said the "evidence

supports the commission of nonconsensual forced sexual acts.”

Mr. Strauss-Kahn’s lawyers, Mr. Brafman and Mr. Taylor, declined to comment on Thursday evening.

The case was not scheduled to return to court until July 18.

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July 1, 2011

Strauss-Kahn Accuser's Call Alarmed Prosecutors

By JIM DWYER and MICHAEL WILSON

Twenty-eight hours after a housekeeper at the Sofitel New York said she was sexually assaulted by Dominique Strauss-Kahn, she spoke by phone to a boyfriend in an immigration jail in Arizona.

Investigators with the Manhattan district attorney's office learned the call had been recorded and had it translated from a "unique dialect of Fulani," a language from the woman's native country, Guinea, according to a well-placed law enforcement official.

When the conversation was translated — a job completed only this Wednesday — investigators were alarmed: "She says words to the effect of, 'Don't worry, this guy has a lot of money. I know what I'm doing,'" the official said.

It was another ground-shifting revelation in a continuing series of troubling statements, fabrications and associations that unraveled the case and upended prosecutors' view of the woman. Once, in the hours after she said she was attacked on May 14, she'd been a "very pious, devout Muslim woman, shattered by this experience," the official said — a seemingly ideal witness.

Little by little, her credibility as a witness crumbled — she had lied about her immigration, about being gang raped in Guinea, about her experiences in her homeland and about her finances, according to two law enforcement officials. She had been linked to people suspected of crimes. She changed her account of what she did immediately after the encounter with Mr. Strauss-Kahn. Sit-downs with prosecutors became tense, even angry. Initially composed, she later collapsed in tears and got down on the floor during questioning. She became unavailable to investigators from the district attorney's office for days at a time.

Now the phone call raised yet another problem: it seemed as if she hoped to profit from whatever occurred in Suite 2806.

The story of the woman's six-week journey from seemingly credible victim, in the eyes of prosecutors, to a deeply unreliable witness, is drawn from interviews with law enforcement

officials, statements from the woman's lawyer and a letter from prosecutors to Mr. Strauss-Kahn's defense team released in court on Friday. Some of the events were confirmed by both law enforcement officials and the women's lawyer; others rely solely on law enforcement officials. In the end, it was the prosecutors' assessment of the housekeeper's credibility that led them to downgrade their confidence in the case and agree on Friday that Mr. Strauss-Kahn could be freed from house arrest.

In the beginning, her relationship with prosecutors was strong. Her account seemed solid. Over time, the well-placed official said, they discovered that she was capable of telling multiple, inconsistent versions of what appeared to be important episodes in her life. After the encounter with Mr. Strauss-Kahn, she asked her supervisor at Sofitel, "Can any guest at the hotel do anything they want with us?" her lawyer, Kenneth P. Thompson, said during a sidewalk press conference on Friday defending her.

The supervisor called security, and officers, finding semen on the floor and wall, called the police, setting off the quick chain of events that led to police officers escorting Mr. Strauss-Kahn off an Air France plane set to depart Kennedy International Airport.

Suspensions of the woman's associations arose relatively quickly: within a week of Mr. Strauss-Kahn's arrest, the authorities learned of a recorded conversation between the subject of a drug investigation and another man, who said his companion was the woman involved in the Strauss-Kahn matter, according to another law enforcement official.

Prosecutors and investigators interviewed the woman at length.

Her immigration history was a focus. At first, she told them what she told immigration officials seven years ago in her accounts of how she fled Guinea and her application for asylum on Dec. 30, 2004. She described soldiers destroying the home where she lived with her husband, and said they were both beaten because of their opposition to the regime. She said her husband died in jail.

But then, in a subsequent interview with Manhattan prosecutors, she said the story was false, one she had been urged to tell by a man who gave it to her on a cassette recording to memorize. She had listened to the recording repeatedly.

The housekeeper also told investigators that she had been gang raped in Guinea. She cried and became "markedly distraught when recounting the incident," according to a letter to the defense from prosecutors released Friday. But she later admitted that that, too, was a lie, once again one she had told to help her application for asylum. She said she was indeed raped in Guinea, but not in the way she had described.

Her lawyer, Mr. Thompson, said she was desperate to leave Guinea, and had been encouraged to embellish her application for asylum.

The boyfriend in the Arizona detention center was another issue. He had been arrested while bartering counterfeit designer clothing from Manhattan's Chinatown for marijuana in the Southwest, the well-placed law enforcement official said. Her lawyer said she did not know the man was "a drug dealer."

Meanwhile, as the interviews continued, the relationship grew more strained. During a meeting at the district attorney's office on June 9, the woman wept as she was questioned closely after Mr. Thompson had left for another engagement. Her 15-year-old daughter, who was waiting outside, noticed that her mother was upset and called a relative to alert Mr. Thompson. The lawyer called the prosecutors and demanded an end to the questioning. He said on Friday that the daughter heard them shout, "Get out! Get out! Get out of here!" at her mother. The authorities say there was no shouting.

At another meeting, the woman threw herself to the floor in response to questions, the well-placed official said.

Then, for some 10 days, prosecutors were unable to get Mr. Thompson to bring her in; the lawyer said she was being treated for a shoulder injury that she suffered in the attack, an injury she had not reported earlier.

The final meeting occurred on Tuesday in the seventh-floor offices of the district attorney at 1 Hogan Place. It began at 11 a.m. and lasted five or six hours, except for a short lunch break, around an oval table in a conference room in the offices of the Public Integrity Unit.

It was devastating. In recent weeks, investigators collected bank records showing deposits of thousands of dollars in Arizona, Georgia, New York and Pennsylvania to an account in her name.

The woman had repeatedly said that the Sofitel was her only source of income.

Now, investigators confronted her with the bank records.

The woman, silent, turned to Mr. Thompson, seemingly pleading for direction on how to respond. He seemed startled.

"He was speechless," the well-placed official said.

The district attorney's office said the woman had lied about her income to maintain her public housing, and had claimed a friend's child as her own dependant to increase her tax refund.

At the same meeting, the woman gave a new version of what she had done immediately after the encounter with Mr. Strauss-Kahn. In testimony before the grand jury in May, she said she had fled Suite 2806 to an area in the main hallway and waited until she saw Mr. Strauss-Kahn leave in an elevator. She has said that her supervisor arrived a short time later, and that she told her supervisor what had happened.

On Tuesday, the well-placed official said, she told investigators new details, stating, "I forgot to tell you this."

In fact, she said, she left Mr. Strauss-Kahn's room and entered another room — her lawyer said it was Suite 2820 — and cleaned it, and then returned to Suite 2806 and cleaned it until her supervisor arrived.

"She did not know what to do," her lawyer said. "She did not want to lose her job. She knew that her supervisor was going to be coming upstairs momentarily. So, she went into another room."

And yet, even this version was not corroborated by card-key data obtained by investigators on Friday, which indicated that the housekeeper went to the other room only after she had finished Mr. Strauss-Kahn's room.

Some within the district attorney's office suggested that the rush to bring the case to a grand jury may have contributed to its current, weakened state.

Early on, there appeared to be disagreement in the office over how to proceed — whether to agree to a bail package for Mr. Strauss-Kahn and take more time to investigate before seeking his indictment, or whether to try to keep him locked up and quickly take the case to the grand jury for an indictment, according to three people involved in the case.

The office chose to seek a quick indictment, but a Manhattan judge let Mr. Strauss-Kahn out on bail anyway.

Mr. Thompson said that the housekeeper's account of what took place in Suite 2806 is the only one that matters, and said that in the jail recording, she recounted a version of the encounter that matched what she had told the police.

"It's a fact that the victim here has made some mistakes, but that doesn't mean she's not a rape victim," Mr. Thompson said Friday.

The woman has been crushed that her inconsistent statements have been brought to light, Mr. Thompson said. "I will go to my grave knowing what this man did to me," she told him on Friday, he said.

John Eligon and William K. Rashbaum contributed reporting.



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August 8, 2011

VIA HAND DELIVERY AND ELECTRONIC MAIL

Ms. Joan Illuzzi-Orbon, Esq.
Mr. John (Artie) McConnell
Assistant District Attorneys for New York County
One Hogan Place
New York, New York 10013

Re: Response to Your August 5, 2011 Correspondence

Dear Assistant District Attorneys Illuzzi-Orbon and McConnell:

I am in receipt of your correspondence of August 5, 2011 (the "Letter") asking various questions, which are privileged and/or would be confidential for *any* purpose including the use in a criminal trial, that you allege were prompted by a *New York Times* article of July 27, 2011 and pursuant to your purported obligation to "evaluate the evidence in this case, determine the viability of a prosecution and meet our constitutional legal obligations." We assume that the Letter was vetted and approved by District Attorney Cyrus R. Vance, Jr., as well as Chief Assistant District Attorney Daniel Alonso and Assistant District Attorney John Irwin.

While you go to great lengths to justify your Letter under *Brady* and *Giglio*, it is patently evident that the only purpose of your Letter is to further harass and retaliate against [redacted] and her counsel for their repeated and justified instance that a Special Prosecutor be assigned to this matter. This conclusion is warranted given the numerous instances, supported by objectively clear facts, outlined further below, of attempts to undermine the veracity and successful prosecution of this matter as well as the obvious fact that any conversations that we may have had with counsel for Mr. Strauss-Kahn would be first hand information that they already possess and would be confidential for *any* purpose including the use in a criminal trial.

Moreover, when [redacted] and I were in the District Attorney's Office on July 27, 2011, Assistant District Attorney Illuzzi-Orbon herself admitted in substance that she "didn't care about a civil lawsuit" and that "if something happened like this to me, my husband John would file a lawsuit in a second." Regardless of your motivations, however, I want to be crystal clear.

Thompson Wigdor LLP ATTORNEYS AND COUNSELORS AT LAW

Ms. Joan Illuzzi-Orbon, Esq.

Mr. John (Artie) McConnell

August 8, 2011

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At no point and time have I, any member of my Firm and/or legal representative working with me on the Strauss-Kahn matter made (hypothetically or real) any monetary demand and/or range of figures to either settle ... civil lawsuit or to resolve the criminal matter. Any suggestion or implication to the contrary is absolutely false.

While puzzling, to say the least, from the onset of this case through today, your Office has continued its attempts to undermine the credibility of ... and the successful prosecution of this matter. These efforts include, but are certainly not limited, to the following:

- Assistant District Attorney Illuzzi-Orbon, the lead prosecutor on the Strauss-Kahn case, telling me on June 9, 2011, without ever first hearing ... personally describe how Mr. Strauss-Kahn violently attacked and sexually assaulted her at the Sofitel hotel, that "No one with half a brain would ever put her on the stand," which showed that ADA Illuzzi-Orbon had already made up her mind to not bring the case to trial, despite the substantial evidence showing that ... was sexually assaulted by Mr. Strauss-Kahn;
- ADA Illuzzi-Orbon falsely claiming to me on June 9, 2011 that ... had changed her account of what Mr. Strauss-Kahn said to her during the sexual assault and that she had been forced to her knees only to later admit, the following day, that she had "made a mistake;"
- The screaming and yelling a ... y Assistant District Attorney Ann P. Prunty within ear-shot of ... 's young daughter, and the disrespect that ADA Prunty showed ... by throwing her out of your Office on June 9, 2011 after I would not let she and ADA Illuzzi-Orbon continue meeting with ... in my absence. Even ADA Illuzzi-Orbon admitted to me right in the presence of ... on June 20, 2011 that ADA Prunty had told ... , - sex crime victim, to "Get out" of your Office. As I have repeatedly stated, ... deserved to be treated better than that;
- The confiscation of ... and her daughter's private cell phones for months, investigating her relatives and placing ... and her daughter in a hotel in Brooklyn for weeks that lacked any type of security and put them in jeopardy;
- Turning over ... private medical records to Mr. Strauss-Kahn's lawyers well before you were required to do so and without any prior notice to ... or her counsel, as well as the refusal by ADA Illuzzi-Orbon and other prosecutors handling the Strauss-Kahn case to respond for almost a week to multiple written inquires from me regarding whether your Office had in fact given copies of ... medical records to the defense;

Thompson Wigdor LLP ATTORNEYS AND COUNSELORS AT LAW

Ms. Joan Illuzzi-Orbon, Esq.

Mr. John (Artie) McConnell

August 8, 2011

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- Your Office's repeated insistence that [redacted] come in to meet with prosecutors when she was in physical pain as a result of the shoulder injury that she sustained during Mr. Strauss-Kahn's attack on her, and ADA Irwin's callous comment to me and my partner Douglas Wigdor during our meeting with DA Vance, ADA Alonso and him on June 22, 2011 that he suffered the same type of shoulder injury as [redacted] and that all she had to do to recover from it is to go to physical therapy and pull on some rubber bands – a comment that was apparently made in an effort to get us to bring [redacted] to meet with him the next day so that he could then go to Barbados on a two-week vacation;
- Your Office's failure to disclose to Mr. [redacted] or her counsel that Marc A. Agnifilo, an attorney defending Mr. Strauss-Kahn in the criminal case, whom Mr. Alonso had described as a "great trial lawyer" to me and my partner Douglas Wigdor during our meeting with him on June 10, 2011, was married to Assistant District Attorney Karen Friedman-Agnifilo, the Chief of the Trial Division and the direct supervisor of the ADA Irwin, who is overseeing the Strauss-Kahn prosecution team. Moreover, it has been disclosed to us by a respected journalist that despite Mr. Agnifilo's assertion to the *New York Times* that "We're pretty regimented about it. If she's recused from a case, we really don't talk about it," (emphasis added), ADA Friedman-Agnifilo may have continued to sit-in on meetings in which the Strauss-Kahn matter was discussed;
- Your Office's failure to notify prosecutors and other staff throughout the Office in writing or otherwise that Ms. Friedman-Agnifilo had recused herself from the Strauss-Kahn case;
- The filing of a purported Brady letter without first seeking an *in camera* review of the "evidence" to determine whether the "facts" were Brady and taking no steps to file such letter under seal with a protective order to ensure that [redacted] personal information concerning her immigration status and prior rape remained confidential and so as to not deter future victims of crime from coming forward who may have immigration issues;
- The apparent leaking of false information to the *New York Times*, not contained within the so-called *Brady* letter, including a false account regarding a conversation that ADAs Alonso and Illuzi-Orbon claimed captured [redacted] talking with a prisoner in Arizona about Mr. Strauss-Kahn and stating, "Don't worry, this guy has a lot of money. I know what I am doing" and then making [redacted] and me wait 28 days to listen to the purported tape only to confirm that such conversation as apparently disseminated by your Office was false. In addition, despite my request in writing, your Office has refused to confirm that an internal investigation has been conducted and that appropriate discipline has been taken against the sources of such false and damaging leaks;

Thompson Wigdor LLP ATTORNEYS AND COUNSELORS AT LAW

Ms. Joan Illuzzi-Orbon, Esq.

Mr. John (Artie) McConnell

August 8, 2011

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- Your Office's failure to inform _____ or her counsel of the results of your Office's purported investigation into the death threat made against _____ that was left on my voice mail and transmitted to ADA Illuzzi-Orbon back in June;
- Your Office's failure to obtain the electronic time-card entry records from the Sofitel for Room 2820 prior to informing Mr. Strauss-Kahn's lawyers, and apparently the media, that _____ allegedly cleaned Room 2820 after she was sexually assaulted, which was completely false;
- Your Office's failure, up until the time I brought David Koubi, Tristane Banon's attorney, all the way from France, to meet with ADAs Irwin, Illuzi-Orbon and DA Vance himself on July 19, 2011, to file the appropriate papers in France to secure Ms. Banon's testimony in the criminal case;
- Your Office's failure to respond to multiple defamatory articles in the New York Post that falsely stated that _____ is a prostitute and hooker and was "turning tricks" while in the protective custody of your Office. In fact, a senior prosecutor was quoted as saying "I can't say with 100 percent certainty that it's not true" regarding whether _____ was "turning tricks" in the hotel in Brooklyn where your Office placed her following the sexual assault;
- Your Office's reported misdemeanor – no jail plea bargain offer to Strauss-Kahn (even if made as a hypothetical) without first informing _____ or her counsel and/or completing your investigation; and
- The failure to attempt to interrogate Mr. Strauss-Kahn on May 14, 2011 when he was taken into custody by the New York City Police Department and while your Office was already investigating this matter. While we asked DA Vance on June 22, 2011 whether an Assistant District Attorney was present at Special Victims while Mr. Strauss-Kahn was in custody, Mr. Vance did not know the answer to that question. Similarly, when asked why Mr. Strauss-Kahn was not interrogated as would be routine for any other criminal defendant who was being accused of a serious sexual crime, Mr. Vance did not have an answer but indicated that he would look into it. To date, we still have not heard an explanation.

Since _____ retained my law firm, it was always our intention, as well as intention, to fully cooperate with your Office. And we have done that – even to this very day. After all, _____ was violently attacked and sexually assaulted by Mr. Strauss-Kahn in Room 2806 at the Sofitel on May 14, 2011. Moreover, there is substantial evidence showing that Mr. Strauss-Kahn committed violent sex acts against _____. As Assistant District Attorney John "Artie" McConnell stated in Court on the record on May 16, 2011 about _____ She made

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Ms. Joan Illuzzi-Orbon, Esq.

Mr. John (Artie) McConnell

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outcries to multiple witnesses immediately after the incident, both to hotel staff and law enforcement. She was then taken to the hospital and was given a full sexual assault forensic examination. The observations and findings during that exam corroborate her account."

Despite what I have outlined above, I continued to make [redacted] available for further questioning, gave you considerable leads of other victims, and offered my advice on various avenues to investigate. Unfortunately, your Office seems determined to treat [redacted] as the Defendant and Mr. Strauss-Kahn as the victim and to spend more time investigating and now apparently her lawyers, than her attacker. Furthermore, through the use of intimidation tactics, unscrupulous and false leaks to the media, and public attacks on the victim and her attorneys, your Office has managed to turn back the clock to a time in which victims of sexual crimes rarely came forward for fear of exactly what has happened to [redacted] this case.

In an effort to placate those who have been rightfully critical at your Office's handling of this case, you have apparently undergone an illusory, after the fact, investigation. If you are intent on dismissing the case (as it seems patently obvious), it is time for your Office to stop its efforts to justify a dismissal or misdemeanor no-jail guilty plea by blaming [redacted] the actual victim, which is costing taxpayers unquantifiable amounts of money in wasted time and resources, diminishing our justice system and deterring future victims of sex crimes from coming forward. Regardless of whether your Office dismisses the case against Mr. Strauss-Kahn or gives him a misdemeanor no-jail guilty plea, we, [redacted] civil lawyers, are more than ready to hold him accountable for his deplorable acts. In furtherance of that goal, earlier today we filed a civil complaint against Mr. Strauss-Kahn. I look forward to the day when I am able to address a jury of [redacted] peers and describe to them all of the horrible acts that Mr. Strauss-Kahn committed against an innocent hardworking woman who came to our country for a better life.

Sincerely,



Kenneth P. Thompson

cc: Cyrus Vance, Esq., (via email only)
Daniel Alonso, Esq., (via email only)
John Irwin, Esq., (via email only)
Ann P. Prunty, Esq., (via email only)